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**LEYTE IV ELECTRIC COOPERATIVE, INC.**

Brgy. Lamak, Hilongos, Leyte  
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March 4, 2024

Item No.: 10

Date: 12 2024 MAR

SANGGUNIANG PANLALAWIGAN



**HON. LEONARDO M. JAVIER, JR.**  
Provincial Vice Governor  
Province of Leyte

SUBJECT: Request for a Certificate of Receipt of the attached Joint Application

Dear **Vice Gov. Javier**:

In compliance with the requirements of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 ("EPIRA"), its Implementing Rules and Regulations ("IRR"), and the Energy Regulatory Commission's ("ERC") Rules of Practice and Procedure ("ERC Rules"), we are furnishing you a copy of the Joint Application complete with annexes and accompanying documents (except those subject of a motion for confidential treatment of information) to be filed with the ERC entitled:

**"IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE EMERGENCY POWER SUPPLY AGREEMENT BETWEEN LEYTE IV ELECTRIC COOPERATIVE, INC. AND GNPOWER DINGININ LTD. CO., WITH PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION"**

In connection thereto, we respectfully request your office to issue three (3) original copies of a certification attesting that the Office of the Sangguniang Panlalawigan of Leyte was duly served a copy of the said Joint Application together with its annexes and accompanying documents. Under the EPIRA-IRR and the ERC Rules, the certification should be issued by the Office of the Sangguniang Panlalawigan of Leyte or his duly authorized representative. Attached is a blank certification which your office may opt to use for this purpose.

Thank you very much for your usual cooperation.

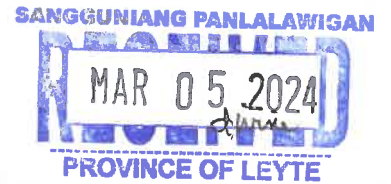
Respectfully,

**BRENDA FLORES-AMPOLITOD**  
General Manager

For and in behalf of the GM:

  
**Engr. JANET L. NOTARTE**  
OIC-Designate/Manager, Corporate Planning Department

REPUBLIC OF THE PHILIPPINES  
**ENERGY REGULATORY COMMISSION**  
Exquadra Tower, Ortigas Center  
Pasig City, Metro Manila



IN THE MATTER OF THE  
APPLICATION FOR APPROVAL  
OF THE EMERGENCY POWER  
SUPPLY AGREEMENT BETWEEN  
LEYTE IV ELECTRIC  
COOPERATIVE, INC. AND  
GNPOWER DINGININ LTD. CO.,  
WITH PRAYER FOR  
CONFIDENTIAL TREATMENT  
OF INFORMATION,

ERC Case No. \_\_\_\_\_ RC

LEYTE IV ELECTRIC  
COOPERATIVE, INC. and  
GNPOWER DINGININ LTD. CO.,  
*Applicants.*

X-----X

**JOINT APPLICATION FOR APPROVAL OF  
EMERGENCY POWER SUPPLY AGREEMENT  
(with Prayer for Confidential Treatment  
of Information)**

Applicants Leyte IV Electric Cooperative, Inc. ("**LEYECO IV**") and GNPower Dinginin Ltd. Co. ("**GNPD**"; collectively, the "**Applicants**"), by their respective counsels, respectfully state:

**The Parties**

1. LEYECO IV is a non-stock and non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Philippines, with principal office in the

Municipality of Hilongos, Province of Leyte. LEYECO IV operates an electric light and power distribution service, for which it was issued an exclusive franchise by the National Electrification Commission, in Baybay City and the municipalities of Inopacan, Matalom, Hindang, Bato, and Hilongos, all in the Province of Leyte.

2. GNPD is a limited partnership duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at GNPower Energy Complex, Sitio Dinginin, Barangay Alasasin, Municipality of Mariveles, Province of Bataan. GNPD owns and operates a 1,336-megawatt ("**MW**") coal-fired power plant (the "**Plant**") which it uses to supply power to its customers.

3. The Applicants may be served with notices, orders, and processes of the Honorable Commission through their respective counsels at the addresses indicated below.

### **Statement of Facts**

4. On May 3, 2019, the Supreme Court promulgated its decision in *Alyansa Para Sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission* ("**Alyansa Ruling**"),<sup>1</sup> which declared that power supply agreements ("**PSAs**") submitted to the Honorable Commission on or after June 30, 2015 were required to undergo the competitive selection process ("**CSP**") prescribed by the Honorable Commission's issuances.

5. On August 10, 2023, this Honorable Commission issued an *Advisory* (the "**August 10 Advisory**") informing all Distribution Utilities ("**DUs**") with PSAs affected by the Alyansa Ruling "*that the Commission has approved a Transition Period to allow the DUs the opportunity to source their power supply requirements through an Emergency Power Supply Agreement (EPSA). The Transition Period will be counted from the day after the DU receives the ERC's Order or Decision implementing the Alyansa Ruling and until the date the DU executes an EPSA or thirty (30) days, whichever is earlier.*"

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<sup>1</sup> G.R. No. 227670, May 3, 2019.

6. One of the PSAs affected by the Alyansa Ruling was the Applicants' Power Purchase and Sale Agreement (the "**PPSA**"). At the time the Alyansa Ruling was issued, the application for approval of the PPSA was docketed as ERC Case No. 2016-055 RC and pending with this Honorable Commission (the "**PPSA Application**").

7. On August 15, 2023, LEYECO IV received this Honorable Commission's *Order* dated April 19, 2023 (the "**Dismissal Order**"), which: (a) dismissed with prejudice the PPSA Application, (b) terminated the provisional authority for the implementation of the PPSA, and (c) directed the Applicants to stop implementing their PPSA immediately upon receipt of the order. In compliance with the Dismissal Order, the Applicants stopped implementing their PPSA on September 15, 2023, which resulted in a supply deficit.

8. Because of the deficit caused by the cessation of supply, LEYECO IV needed to source enough capacity to meet the demands of its captive market. Thus, LEYECO IV sent letter-invitations to various generation companies ("**GenCos**") soliciting offers for a contracted capacity of 16 MW Baseload. GNPD was one of the GenCos that submitted an offer to LEYECO IV.

9. After careful consideration of the offers received from GNPower Kauswagan Ltd. Co., Sual Power Inc., and GNPD, LEYECO IV found GNPD's offer as the most advantageous for its customer. A copy of the evaluation matrix is attached as **Annex M**. Thus, within transition period stated in the August 10 Advisory, the Applicants executed the *Emergency Power Supply Agreement* dated September 13, 2023 (the "**EPSA**"). A copy of the EPSA is attached as **Annex A**.

10. The Applicants filed this Joint Application to seek the approval of the EPSA.

### **Salient Features of the EPSA**

11. The duly executed EPSA contains the following salient provisions:

(a) **TERM AND CONTRACTED CAPACITY.** The EPSA shall commence from the Operations Effective Date and shall expire twelve (12) months from the Operations Effective Date or effectivity of the EPSA based on this Honorable Commission's approval, unless terminated earlier in accordance with the terms of the EPSA which shall not exceed one (1) year. The contracted capacity under the EPSA is 16 MW.

(b) **CONTRACT PRICE.** The Contract Price shall be composed of Capacity Fee, Energy Fee, and Governmental Charges.

(c) **CAPACITY FEE.** The Capacity Fee is based on the Capacity Utilization Factor ("**CUF**"). The Capacity Fee corresponding to each CUF is listed in Schedule 1 of the EPSA.<sup>2</sup>

(d) **ENERGY FEE.** The Energy Fee is computed as follows:

$$\text{Energy Fee} = \text{IEF} \times \left[ \frac{\text{CIF}_n}{\text{CIF}_0} \right] \times \text{MAE}$$

Where:

**IEF** = Initial Energy Fee equal to \$0.0328 / kWh  
**CIF<sub>n</sub>** = CIF Cost of Fuel for Billing Period *n*

Where:

"CIF<sub>n</sub> Cost of Fuel for the Billing Period" means (i) the blended price of the invoiced cost of coal from each supplier for the relevant period and for that portion of such supplier's coal consumed during the Billing Period plus (ii) the additional costs for insurance, freight and other fuel-related governmental charges to deliver the coal to the Facility

**CIF<sub>0</sub>** = Base CIF Cost of Fuel equal to \$10.2514 / million kcal  
**MAE** = monthly actual energy, in kWh, or max (MEOT, AE)

<sup>2</sup> The CUF is defined as "the [CUF] between 70% and 100%, provided that if the actual CUF is below the MEOT provided in 1.1. of Schedule I, the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the MEOT."

Where:

MEOT = 70% \* Contracted Capacity \* BPH, in kWh  
 AE = actual energy delivered, in kWh

12. Because of the dismissal of the PPSA Application, LEYECO IV is currently in need of 15.36 MW to address its demand for 2024, which is expected to reach a peak of up to 19.36 MW. With the implementation of the EPSA, LEYECO IV expects to eliminate this deficit and even estimates that there will be 0.645 MW surplus during the EPSA's term. A copy of LEYECO IV's supply-demand scenario is attached as **Annex E**.

13. The indicative rate impact on LEYECO IV's overall generation rate with and without the additional supply from GNPD are as follows:

<b>Generation Rate without GNPD</b>	PhP 7.6548/kWh
<b>Generation Rate with GNPD</b>	PhP 6.1907/kWh
<b>Generation Rate Impact</b>	(PhP 1.4641/kWh)

14. In support of the Joint Application, copies of the following documents and/or information are attached herein as annexes:

<b>Description of Document</b>	<b>Annex</b>
EPSA	<b>A</b>
<i>Articles of Incorporation</i> dated November 7, 1975	<b>B</b>
<i>Bylaws</i> dated November 7, 1975	<b>B-1</b>
<i>Certification on Non-Availability of Alternative Demand Side Management (DSM) Program</i> dated September 26, 2023	<b>C</b>
<i>Distribution Development Plan</i> for the years 2023 to 2032	<b>D</b>
<i>Historical and Forecasted Supply-Demand Scenario</i> for the years 2013 to 2030	<b>E</b>

<b>Description of Document</b>	<b>Annex</b>
Average Daily Load Curve	<b>E-1</b>
<i>Performance Assessment of the System based on 5-year reliability history and 2023 reliability</i>	<b>F</b>
<i>An estimation of the potential for a reduction in load supplied by LEYECO IV due to retail competition</i>	<b>G</b>
Letter-invitations to bid and evaluation guidelines issued by LEYECO IV along with GenCos' responses	<b>H and series</b>
Proposals and term sheets submitted by GenCos to LEYECO IV	<b>I</b>
Secretary Certificate listing Board of Directors and Officers	<b>J</b>
Notice of Award	<b>K</b>
<i>Board Resolution No. 2023-099 dated September 11, 2023 (Awarding EPSA to GNPD)</i>	<b>L</b>
EPSA evaluation matrix	<b>M</b>
<i>Articles of Partnership dated May 21, 2014</i>	<b>N</b>
<i>Amended Articles of Partnership dated February 18, 2022</i>	<b>N-1</b>
<i>Certificate dated February 1, 2023 (Certifying GNPD's information sheet)</i>	<b>O</b>
<i>GNPD Project Ownership Structure Chart dated August 31, 2023</i>	<b>P</b>
<i>Certificate of Registration No. 2022-058 issued by the Authority of the Freeport Area of Bataan</i>	<b>Q</b>
<i>Environmental Compliance Certificate No. ECC-CO-1406-0012 dated November 10, 2015</i>	<b>R</b>
<i>Certificate of Compliance No. 22-10-M-00203L dated October 11, 2022</i>	<b>S</b>
<i>Amended Certificate of Endorsement No. 2021-08-172 dated August 3, 2021</i>	<b>T</b>
Write-up on the non-applicability of the following requirements to GNPD:	<b>U</b>

Description of Document	Annex
<ul style="list-style-type: none"> <li>• Shareholders' agreement;</li> <li>• By-laws;</li> <li>• Renewable energy service/operating contract and Certificate of Registration or Certification of Commerciality from the Department of Energy;</li> <li>• Distribution wheeling service agreement;</li> <li>• Water permit from the National Water Resources Board;</li> <li>• Copy of related agreements (<i>i.e.</i>, transmission wheeling contract, independent power producer administrators agreement, engineering, procurement, and construction contract, operation and maintenance contract, wholesale aggregator agreement, project feasibility study, etc.);</li> <li>• Documents for new application;</li> <li>• Analysis of inconsistencies in documents presented; and</li> <li>• Potential cost of ancillary services.</li> </ul>	
Transmission Service Agreement covering the Plant	<b>V</b>
Verified Certification dated September 29, 2023 stating that the Facility is ready to deliver power to address the emergency situation of LEYECO IV and that the rates being charged are no more than the latest rate approved by the ERC for the same or relevant technology in the area	<b>W</b>
This Honorable Commission's Decision dated 06 November 2020 in ERC Case No. 2019-004 MC entitled <i>In the Matter of the Application for the Approval of the Authority to Develop, Own, and Operate Dedicated Point-to-Point Limited Transmission Facilities with Motions for Provisional Authority and Confidential Treatment of Information, GNPowder Diginin Ltd. Co. (GNPD), Applicant.</i>	<b>X</b>
Executive summary of the EPSA	<b>Y</b>
<b>[Confidential]</b> Sources of funds/financial plans	<b>Z</b>
<b>[Confidential]</b> Certification dated March 25, 2022 (Financing arrangements)	<b>AA and series</b>
<b>[Confidential]</b> Generation rate and derivation	<b>BB</b>



Description of Document	Annex
<b>[Confidential]</b> Financial model	<b>CC-1</b>
<b>[Confidential]</b> Cash flow	<b>CC-2</b>
<b>[Confidential]</b> <i>Sworn Statement</i> dated November 23, 2023 (Fuel procurement process)	<b>DD</b>
Technical and economic characteristics of the Plant	<b>EE</b>
Audited Financial Statements for the year 2022	<b>FF</b>
<b>[Confidential]</b> <i>Executive Summary</i> dated June 22, 2022 (Heat rate certification and test results)	<b>GG</b>
Simulation of Minimum Energy Off-take(MEOT)	<b>HH</b>
Wholesale Electricity Spot Market registration information	<b>II</b>
Single line diagram	<b>JJ</b>
<i>Certification on Partnership Agreement</i> dated February 6, 2023	<b>KK</b>
Metering Service Agreement covering the Plant	<b>LL</b>

### **ALLEGATIONS IN SUPPORT OF THE PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION**

15. Section 1, Rule 4 of the *Revised Rules of Practice and Procedure of the Energy Regulatory Commission ("Revised ERC Rules")* provides that a party to any proceeding before this Honorable Commission may request that documents and/or information in this Honorable Commission's possession be treated as confidential and not be disclosed.

16. In line with this, GNPD prays that **Annexes AA and series, BB, CC and series, DD, GG, and Z** (collectively, the "**Confidential Documents**") and the information contained therein be treated as confidential and not be disclosed to any persons other than the officers and staff of this Honorable Commission.

17. The foregoing documents contain information and data involving GNPD's power rate calculations and financial model, as well as how these are derived. They are not generally available to the public, are proprietary, privileged, and confidential in nature, and should be protected as trade secrets. In *Air Philippines Corporation vs. Pennswell, Inc.*,<sup>3</sup> the Supreme Court held that:

A trade secret may consist of any formula, pattern, device, or compilation of information that: **(1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.** Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but **can be a price list or catalogue or specialized customer list.** **It is indubitable that trade secrets constitute proprietary rights.** The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship." American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source.<sup>4</sup>

<sup>3</sup> G.R. No. 172835, December 13, 2007.

<sup>4</sup> *Emphasis and underscoring supplied.*

18. In the *Decision* in ERC Case No. 2015-111 RC dated 30 May 2017 entitled *In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.-Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC)*, this Honorable Commission categorically stated that formulas and pricing structures of a GenCo must be treated as confidential and may not be publicly disclosed, thus:

In the case of PNOC RC, the documents sought to be protected from disclosure contains formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. **In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one's supplier, it is apparent that the assumptions used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.**

**Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.<sup>5</sup>**

19. Thus, this Honorable Commission has recognized the importance of maintaining pricing structures as confidential to ensure the competitiveness of the generation sector. Such information, which falls within the definition of a trade secret as defined by jurisprudence, is clearly information that merits the confidential treatment provided for under Rule 4 of the Revised ERC Rules.

20. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the EPSA by this Honorable Commission, without the need to disclose the contents of Confidential Documents. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of GNPD's operating costs and expenses.

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<sup>5</sup> *Emphasis supplied.*

21. Further, if the Confidential Documents and the information contained therein are leaked to GNPD's competitors, they will gain undue advantage and could use such information and documents in their operations. Furthermore, the negotiating power of GNPD with parties it plans to contract with or with whom it is currently doing business, will be impeded if it is compelled to disclose such information.

22. Accordingly, one (1) copy each of the Confidential Documents is placed in a sealed envelope, with the said envelope and each page of the documents stamped with the word "*Confidential.*"

### **PRAYER**

WHEREFORE, the Applicants respectfully pray that this Honorable Commission:

(a) **GRANT** the Applicants' Motion for Confidential Treatment of Information and **DECLARE** as confidential the information contained in the Confidential Documents (**Annexes AA and series, BB, CC and series, DD, GG, and Z**)

(b) **ISSUE** a Protective Order treating the Confidential Documents (**Annexes AA and series, BB, CC and series, DD, GG, and Z**) as confidential information in accordance with Rule 4 of the ERC Rules and prescribing guidelines for their protection;

(c) **DIRECT** that the interim rates to be charged under the EPSA shall be capped at the latest ERC-approved generation tariff specific for the plant technology; and

(d) **ISSUE** a Decision **GRANTING** the Joint Application and **APPROVING** the EPSA, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the EPSA, and authorizing LEYECO IV to charge and collect the fees therein from its customers reckoned from the start of power supply by GNPD to LEYECO IV under the EPSA.

Other just and equitable reliefs are likewise prayed for.

Makati for Pasig City, February 22, 2024.

**GATMAYTAN YAP PATACSIL  
GUTIERREZ & PROTACIO**  
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By:



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**MARCO P. NIGRO**

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04/14/2022; Pasig City

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<sup>6</sup> Atty. Nigro has completed all units for the 7<sup>th</sup> MCLE Compliance Period and is awaiting the corresponding certificate.

**COUNSEL FOR LEYECO IV:**

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PTR No. 8490302 dated 1/02/2024

MCLE Compliance No. VII-0004938 valid until 4/14/2025